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MAY 28 2003

In re Application of
Josephine Egan et al
Application No. 09/762,538
Filed: July 19, 2001
Attorney Docket No. 14014.0346U1

OFFICE OF PETITIONS
: DECISION DISMISSING PETITION
: UNDER 37 CFR 1.78(a)(6)
:
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This is a decision on the petition filed by facsimile transmission on May 6, 2003, which is being treated as a petition under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of priority to prior-filed provisional Application No. 60/095,917, filed August 10, 1998.

The petition is **dismissed** as moot for the reasons stated below.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000.

37 CFR 1.78(a)(2)(ii)¹ indicates that the time periods set forth therein do not apply if the later-filed application is: (1) an application for a design patent; (2) an application filed under 35 U.S.C. § 111(a) before November 29, 2000; and (3) a nonprovisional application which entered the national stage after compliance with 35 U.S.C. § 371 from an international application filed under 35 U.S.C. § 363 before November 29, 2000.

Since the instant nonprovisional application is the national stage entry of an international application filed prior to November 29, 2000, the provisions of

¹ 37 CFR 1.78(a)(2) was amended to place its provisions in separate paragraphs (a)(2)(i) through (a)(2)(iv) for clarity. See **Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications**, 66 FR 67087 (December 28, 2001); 1254 Off. Gaz. Pat. Office, 121 (January 22, 2002) (final rule).

37 CFR 1.78(a)(3) for acceptance of a late claim for priority do not apply to the subject nonprovisional application. Accordingly, the petition is dismissed as involving a moot issue.

In view of the dismissal of the instant petition as moot, the \$1,300 fee submitted therefor is unnecessary. Accordingly, as authorized, this fee will be refunded to Deposit Account No. 14-0629 in due course.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

This application is being returned to Technology Center Art Unit 1646.

Karen Creasy for

Frances Hicks
Petitions Examiner
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for Patent Examination Policy